

NOVA SCOTIA COURT OF APPEAL

**Cite as: Cohoon v. Tidman, 1995 NSCA 109  
Chipman, Pugsley and Flinn, J.J.A.**

**BETWEEN:**

NEIL CLAYTON COHOON and  
DIANE SHERMAN

Appellants

Barry J. Alexander  
for the Appellants

- and -

PAUL TIDMAN, GARY MCMULLEN  
and THE MUNICIPALITY OF THE  
COUNTY OF KINGS and ED GODBOUT

Respondents

Chris K. Parker  
and  
James E. Dewar, Q.C.  
for the Respondents

Appeal Heard:  
May 23, 1995

Judgment Delivered:  
May 23, 1995

**THE COURT:**

The appeal is dismissed with costs in the amount of \$500.00 to each respondent, together with their disbursements to be taxed as per oral reasons for judgment of Chipman, J.A.; Pugsley and Flinn, J.J.A.

The reasons for judgment of the Court were delivered orally by

**CHIPMAN, J.A.:**

This is an appeal from a decision of the Nova Scotia Utility and Review Board dismissing an application by the appellants to amend a Notice of Appeal to the

Board and from the consequent dismissal of the appeal to the Board on the basis that the appellant named therein was not an aggrieved person within the meaning of s. 70 of the **Planning Act**.

On September 6, 1994 the respondents obtained from the Council of the Municipality of the County of Kings (the County), a rezoning of property at 450 Marklyn Road, Kingston, Nova Scotia, from Light Industrial Commercial (M1) Zone to Central Business Zone to permit a large beverage room on the property.

On September 29, 1994 a Notice of Appeal was filed with the Board. The appellant listed on the notice was Diane Sherman and it was she who signed it as appellant. On October 7, 1994 the respondents requested a preliminary hearing before the Board. On October 24, 1994 the Board received a letter from the appellant's solicitor stating in part:

"Firstly, I wish to bring to the Board's attention that the real appellant in this matter is not Diane Sherman but Neil Clayton Cohoon of Greenwood. Neil Cohoon is part owner and secretary/treasurer of Nova Vista Homes and Realty Limited as well as sole owner and President of N. Cohoon Enterprises Limited and Alco Enterprises Limited. Diane Sherman is an employee of Mr. Cohoon in his companies and filed the appeal on his behalf on instructions from him. Pursuant to Rule 9(1) the Rules of the Nova Scotia Utility and Review Board, it would be our position that the Notice of Appeal should be amended accordingly."

The Board scheduled a preliminary hearing for November 30, 1994 at which it heard evidence and argument on the issue whether the name of Diane Sherman as appellant should be changed to Neil Cohoon. The parties agreed that if the Board determined that Diane Sherman was the appellant then the appeal should be dismissed on the ground that she was not an aggrieved person within s. 70 of the **Planning Act**, but if the Board determined that the appellant could be substituted in place of Diane Sherman, the appeal would proceed to hearing as the appellant was an aggrieved person within that section of the **Act**.

The appellant owns two beverage rooms in Greenwood. He was also in

the process of organizing a neighbourhood pub in the Village of Kingston. The proposed beverage room of the respondents in the Village of Kingston would provide unwanted competition. As soon as the appellant heard of the application to rezone the property, he took steps to oppose it. He wished, however, to keep his name out of the picture and engaged another party to organize a campaign and petition against the rezoning. When this other party left the area, the appellant engaged Diane Sherman to continue the lobby effort. She arranged for a petition to be signed and presented it to the Council of the County. After the Council approved the rezoning, she made inquiries respecting an appeal to the Board and on the appellant's instructions, she prepared and signed the Notice of Appeal. When it became apparent that there was a problem with this, the appellant retained counsel who brought the true circumstances to the attention of the Board.

In its decision, the Board referred to the following relevant portions of the Planning Appeal Rules made pursuant to s. 12 of the **Utility and Review Board Act**:

- "5 (1) The Notice of Appeal shall state
- (a) the name of the Appellant;
  - (b) the address of the Appellant or the name and address of an individual upon whose documents or notices relating to the appeal may be served;
    - (i) a phone number, if available, at which the Appellant or the individual referred to in clause (h) may be reached during normal business hours.
- (2) A Notice of Appeal shall be signed by the Appellant or the agent or solicitor acting on behalf of the Appellant.
- (3) A Notice of Appeal may be in Form A.
- 9 (1) Subject to subsection (2), a Notice of Appeal may be amended at any time with leave of the Board.

(2) A Notice of Appeal may not be amended for the purpose of adding Appellants."

Counsel for the appellant argued that his application for an amendment did not involve adding a party but merely the making of a substitution of the name of an undisclosed principal for the name of the agent. After reciting the facts, the Board said in its decision:

" Mr. Cohoon testified that he had not disclosed his name during the process because he wanted the focus to be on the planning aspects and not on the fact that a competitor was opposed. While this might be a valid argument in the process leading up to the Council's decision, it does not justify failing to properly identify himself on the appeal to the Board. The Board notes that during the process Mr. Cohoon acquired an option to lease property in Kingston, which is in a commercial zone and has made an application to the Liquor License Board to obtain a license to operate a beverage room in the premises.

The Board also notes that it is concerned about the allegations of threats made by applicants when an appeal is made to the Board. It is indeed unfortunate if the owner of property and the person who applies to rezone the property do not recognize that an appeal to the Board is a legitimate part of the planning process.

**Section 5(1)(a)** of the **Planning Appeal Rules** and Form A are clear that the name of the Appellant is to appear on the Notice of Appeal. The **Planning Appeal Rules** permit an agent to sign a notice of appeal. In the Board's opinion where a person is signing a notice of appeal as agent for an appellant, both the name of the appellant and the existence of the agency should be identified.

An application to amend a notice of appeal under **s. 9(1)** of the **Planning Appeal Rules** requires leave of the Board. Granting of leave is discretionary. The facts in this case are not favourable to the person making the application to amend the Notice of Appeal. The Board determines that this is not an appropriate case to exercise its discretion to grant leave. The Board refuses the application to amend the Notice of Appeal."

In view of its refusal to permit the amendment, the Board dismissed the appeal of Ms. Sherman as she was not an aggrieved person.

An appeal from the Board to this Court lies on a question of law or

jurisdiction. The question is whether the Board erred in law in the exercise of its discretion in refusing the amendment. This Court will not interfere with a discretionary order unless wrong principles of law have been applied or a patent injustice would result. This principle has been restated by this Court on many occasions, including the following: **Exco Corporation Ltd. v. Nova Scotia Savings and Loan** (1983), 59 N.S.R. (2d) 331; **Minkoff v. Poole and Lambert** (1991), 101 N.S.R. (2d) 143.

The appellant has not shown that the Board erred in the exercise of its discretion. The appeal is dismissed with costs which we fix at \$500.00 to each respondent, together with their disbursements to be taxed.

Chipman, J.A.

Concurred in:

Pugsley, J.A.

Flinn, J.A.